IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

TAGGART BOYD,

Respondent.

8:21CV120

MEMORANDUM AND ORDER

This matter is before the court on the Notice of Appeal (filing 21) and Motion for Leave to Appeal in Forma Pauperis ("IFP") (filing 22) filed by Petitioner on October 18, 2021. Petitioner seeks to appeal the court's Memorandum and Order (filing 7) and Judgment (filing 8) entered on June 28, 2021, dismissing Petitioner's habeas petition without prejudice; the July 23, 2021 Memorandum and Order granting Petitioner leave to appeal IFP in his previous appeal (filing 13); the Judgment (filing 17) and Mandate (filing 19) issued by the Eighth Circuit Court of Appeals in Petitioner's previous appeal on August 6, 2021, and September 7, 2021, respectively; and, lastly, this court's September 7, 2021 Order (filing 20) denying Petitioner's "Petition for Permission to Appeal."

A litigant seeking to appeal a judgment must either pay the required filing fees, *see* Fed. R. App. P. 3(e), or proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). The court hereby certifies that the appeal filed by Petitioner in this case is frivolous and not taken in good faith because Petitioner has already prosecuted an appeal to the Eighth Circuit Court of Appeals in which the Court denied a certificate of appealability and dismissed the appeal on August 6, 2021 (filing 17; *see also* filing 19). Since the appeal is not taken in good faith, Petitioner cannot file an appeal in forma pauperis. *See* Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3).

IT IS THEREFORE ORDERED that: Petitioner may not proceed on appeal in forma pauperis, and Petitioner's Motion for Leave to Appeal IFP (filing 22) is denied.

Dated this 28th day of October, 2021.

BY THE COURT:

Richard G. Kopf

Richard G. Kopf
Senior United States District Judge